

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CS Docket No. 96-46

In the Matter of)
)
Implementation of Section 302 of the)
Telecommunications Act of 1996)
)
Open Video Systems)
)
and)
)
Telephone Company-Cable)
Television Cross-Ownership Rules,)
Sections 63.54-63.58)

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CC Docket No. 87-266

To: The Commission

REPLY COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

1. Since its inception, the low power television ("LPTV") industry has fought what has often seemed to be an uphill battle in an effort to have its interests recognized and protected under various rules and regulations that the Commission has implemented during that time. For example, the LPTV industry lobbied successfully for must-carry rights under the 1992 Cable Act, even if those rights are greatly limited. More often than not, however, as in cable leased access and Advanced Television, the rules that are proposed and eventually adopted by the Commission consider lightly or do not consider at all the real issues faced by community television broadcast stations, which provide for many areas the sole source of over-the-air broadcast service. The result is often a reduction or elimination of the ability of viewers in a particular community to access LPTV stations. The Commission can and should avoid such a result in this Open Video Systems ("OVS") rule making proceeding.

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2. The Community Broadcasters Association (“CBA”)¹ hereby submits these Reply Comments in response to the Commission’s *Report and Order and Notice of Proposed Rule Making* in the above-captioned proceeding, and urges the Commission to adopt OVS rules that protect the public’s interest in access to community television broadcast stations while, at the same time, promote competition in the video services market in accordance with the goals of the Telecommunications Act of 1996 (the “1996 Act”). In implementing OVS rules, the FCC should avoid succumbing to pressure to adopt rules quickly and without thorough consideration of the real effects of such regulations. Such careful attention now will avoid the necessity of later reconsideration of rules that do not in practice further the original intent of Congress in enacting the statute, similar to the situation the Commission is currently facing with regard to cable leased access rules.

3. Over forty different parties filed original comments in this proceeding. Such diverse participation shows the varied interests affected by the issues raised in the implementation of OVS. In their comments, cable operators urged the FCC to adopt rules which will allow them to participate in OVS, either as programmers or, more preferably, as OVS operators. The cable interests believe it is unfair to regulate their industry more heavily than new OVS providers. Cable operators generally support rules that prevent discrimination against certain programmers, cross-subsidization by telephone companies which operate OVS, and regulatory flexibility for OVS providers.

¹ CBA is the trade association of the nation’s low power television (“LPTV”) stations. It conducts various activities on behalf of LPTV and represents the interests of the LPTV industry in public policy forums.

4. On the other hand, the telephone industry predictably supports flexible regulation of OVS, where there must be any at all. Telephone interests also object to allowing cable operators run an OVS or operate as a competing programmer on another's OVS in the same market where the cable system is located. Supporters of full power broadcasters, like the National Association of Broadcasters, NBC, ABC and CBS, generally support must-carry rights for over-the-air television broadcast stations and urge the Commission to adopt rules that protect broadcasters' rights with regard to network nonduplication and sports and other exclusivity. Other programmers, including CBA, support nondiscriminatory access to OVS, which includes reasonable rates to be charged by OVS operators for access to their systems.

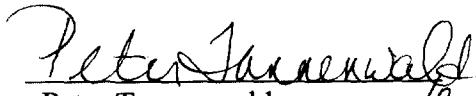
5. Even though the substance of the numerous comments differs a great deal, what is clear is that each commenter, behind its words and arguments, is justifiably seeking to protect its own predominantly economic interests when it appeals to the FCC in this manner. In the short term, and perhaps to a certain extent in the long term, the Commission is being pressured by time, politics, industry lobbyists and its own internal staff to release rules and regulations for OVS that promote competition and deregulation in the video services marketplace while protecting the various interests at stake, not the least of which is the *public* interest. It is indeed an unenviable task with which the Commission has been charged. Nevertheless, CBA cautions the Commission against adopting rules that are not thoroughly thought out in the context of their real world implementation. In the midst of overwhelming pressure from many different sources, the Commission must take the time to ensure that the OVS rules are fair and protect *all* of the interests involved, not just the interests of those who have enough money and power to make

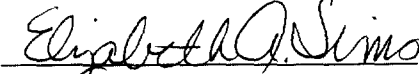
their views known and accepted above and to the detriment of others who do not have the luxury of such resources.

6. Thus, to the extent it has appropriate authority under the 1996 Act, the Commission has an obligation to the public to protect the interests of LPTV and other over-the-air television broadcast stations in implementing rules to govern OVS. LPTV stations provide a shining example of what is still the only source of local programming in many rural areas, and is a unique source of specialized (such as foreign language) programming in many more urban areas. CBA urges the Commission to take the opportunity in adopting OVS rules to demonstrate that it is serious about protecting the public interest by protecting the interests of all over-the-air broadcast stations, including LPTV, even in the face of intense pressure to do otherwise.

Respectfully submitted,

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